

### **Remarks**

At the time of the Office Action claims 1-28 were pending. Claims 18-28 were withdrawn due to a restriction requirement so that claims 1-17 could be prosecuted on the merits. Claims 1, 16 and 17 stand rejected under 35 U.S.C. § 112 second paragraph as being incomplete. Claims 1, 7, 10, 12-15 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. US2003/0151674 to Lin.

Claims 18-28 that were withdrawn from consideration are now canceled without prejudice or disclaimer. The Applicant has already submitted a continuing application (U.S. Patent Application No. 12/013,538) to pursue these claims. Furthermore, claims 2, 9 and 11 are canceled. As can be appreciated, the features of claim 2 are incorporated into claim 1. Lastly, claims 9 and 11 are canceled due to the amendment to claim 1 which caused claims 9 and 11 to be substantial duplicates of claims 3 and 5 respectively.

The Applicants disagree with the § 112 second paragraph rejection set forth in the Office Action. In particular the Applicants respectfully disagree with the Office Action's contention that claims 1, 16 and 17 are "incomplete for omitting essential steps." The Office Action goes on to state that the omitted steps are: "(1) calculating the standard deviation in brightness from the brightness histogram; and (2) calculating the average brightness from the brightness histogram." The Applicants submit that the calculating steps (1) and (2) as suggested in the Office Action are inherent in the Applicants' step of obtaining the brightness histogram. Nevertheless, to comply with the Office's requirements of form and to advance prosecution, claims 1, 16 and 17 are amended as suggested by the Office Action. In view of the present amendments, the Applicants respectfully request withdrawal of the § 112 second paragraph rejection.

Turning now to the art-based rejections of the claims, the Applicants note that the Office Action did not substantively reject claims 2-6, 8-9, 11 and 16. Although the Examiner did not issue an Interview Summary to make the conversation of record, the Applicants submit that Applicants' attorney, Brian Rupp, called the Examiner on March 4, 2008 to determine the status of claims 2-6, 8-9, 11 and 16. During that telephone conversation the Examiner stated that these claims would be allowable if rewritten to address the § 112 rejections. In other words, the Examiner did not find any prior art to support a rejection that these claims are anticipated or obvious.

In re Appln. of Ohmori et al.  
Application No. 10/731,240  
Response to Office Action of February 29, 2008

In view of the previously-mentioned amendments to claims 1, 16 and 17 (vis-à-vis the § 112 rejection) and the incorporation of the language of claim 2 into claim 1, it is submitted that claims 1, 3-8, 10 and 12-17 distinguish over Lin and the other art of record. To this end, the Applicants submit that claims 1, 3-8, 10 and 12-17 are allowable.

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

Respectfully submitted,

/brian c. rupp/

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